



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: AUGUST 12, 2022

IN THE MATTER OF:

Appeal Board No. 622874

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective October 15, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and, in the alternative, disqualifying the claimant from receiving benefits, effective October 15, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 15, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 12, 2022 (), the Administrative Law Judge sustained the initial determination of misconduct and held that as the claimant is disqualified on the basis of misconduct, there was no need to rule on the initial determination of voluntary separation without good cause.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination of misconduct.

Based on the record and testimony in this case, the Board makes the following FINDINGS OF FACT: The claimant worked for a glass shop as a full-time glazer for nearly one year, until October 15, 2021. On that day, the claimant reported to the workplace as scheduled. Ten minutes after arriving, he

informed the owner's son that he had to leave. The claimant did not explain why he had to leave. He then returned to his home.

The employer subsequently texted the claimant, who had been scheduled to complete a job that morning, but the claimant did not respond. The employer also telephoned the claimant, but the claimant did not answer his phone. The employer completed the job that the claimant had been assigned that morning.

At noontime, the employer sent the claimant a text directing him to return his keys. The claimant texted back that he was busy and would get in touch with the employer when he was free. The claimant had thought that, at most, he might be written up for his actions, but believed that the employer's text meant that he was fired. He returned to the workplace later that day only to return the keys. At that time, the employer discharged him for walking off the job. The employer would not have discharged the claimant if the claimant had told him that he was dealing with a family health crisis that morning, but the claimant offered no reason for his actions. The employer had never told the claimant that his job was in jeopardy, although a similar incident had occurred previously, when the claimant walked off the job one afternoon and went home, leaving work unfinished. On that occasion, the claimant had returned to work after the employer called him and asked him to come back to finish his jobs for the day.

**OPINION:** The credible evidence establishes that the employer discharged the claimant for walking off the job and failing to respond to subsequent attempts to reach him. We find that the claimant does not have a compelling reason for his actions, noting that his testimony about his mother's alleged medical situation contains inconsistencies and therefore lacks credibility. However, it is undisputed that the employer had never warned the claimant that his job was in jeopardy, despite a similar occurrence in the past. In light of this, the claimant was not on notice that he could be fired. We further note that the employer would not have fired the claimant if the claimant had reported that his actions were due to a family health emergency. Under these particular circumstances, the record in this case does not establish misconduct for unemployment insurance purposes. In addition, as the claimant was discharged, it cannot be held that he resigned his employment. We therefore must conclude that the claimant was separated from his employment under non-disqualifying circumstances.

**DECISION:** The decision of the Administrative Law Judge is reversed.

The initial determinations are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER